

**FILED**

08/11/2023

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs June 1, 2023

**IN RE MARY M.**

**Appeal from the Circuit Court for Shelby County  
No. CT-3612-20, DD7074 James F. Russell, Judge**

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**No. W2021-00178-COA-R3-JV**

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In this appeal, the circuit court determined that the plaintiff had failed to timely perfect her appeal from an order of the juvenile court. Upon our review of the record, we affirm the ruling of the circuit court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court  
Affirmed; Case Dismissed**

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which W. NEAL MCBRAYER and KENNY W. ARMSTRONG, JJ., joined.

Shae Atkinson, Memphis, Tennessee, for the appellant, Emily Paige M.

Sarah J. Carter, Memphis, Tennessee, for the appellees, Paul M. and Glenda M.

Johnna I. Duke, Scotts Hill, Tennessee, Guardian ad litem.

**MEMORANDUM OPINION<sup>1</sup>**

**I. BACKGROUND**

An emergency motion for protective custody order, immediate injunctive relief, and

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<sup>1</sup> Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

supervised visitation and petition to declare the minor child, Mary M.,<sup>2</sup> dependent and neglected was filed in the Shelby County Juvenile Court (“Juvenile Court”) on October 29, 2018, by the child’s maternal grandparents (“Grandparents”). The child’s mother (“Mother”), who has a history of substance abuse and addiction, had been involuntarily committed. An ex parte protective custody order was entered by the Juvenile Court on November 14, 2018. The petition for dependency and neglect was then heard and sustained on April 8, 2019. Custody was awarded to Grandparents.

On April 15, 2019, Mother filed a request for a rehearing. On February 17, 2020,<sup>3</sup> the order of April 8, 2019 was reconfirmed; an order was entered dismissing the rehearing due to Mother’s failure to appear. Mother filed a motion to set aside the dismissal order on February 19, 2020. On July 6, 2020, the Juvenile Court dismissed the motion to set aside the dismissal order. The order to dismiss the rehearing and the order denying the motion to set aside were stamp filed and entered on August 7, 2020. Mother filled out a uniform civil affidavit of indigency and notice of appeal to the Shelby County Circuit Court (“Circuit Court”).

On January 14, 2021, the matter was dismissed in Circuit Court. The court observed in relevant part as follows:

2. Rules of Juvenile Practice and Procedure, Rule 117, Advisory Commission Comments, state, “[p]rior to entry of a written order, parties are usually bound by the terms of the court’s oral command, assuming the command is specific and unambiguous.” *Blackburn v. Blackburn*, 270 S.W.3d 42 (Tenn. 2008). The Advisory Commission Comments further clarify that Rule 117 is to prevent prejudice of any party of their right to appeal.
3. Mother nor any party in this matter has claimed prejudice due to the date the Juvenile Court clerk stamped any orders certifying [the] order had been mailed. The lack of any prejudice is shown by Mother’s timely request for rehearing and timely Motion to Set Aside in the Shelby County Juvenile Court.
4. Pursuant to TCA 37-1-107, 37-1-159, and Rules of Juvenile Practice and Procedure 118, the right to appeal attaches upon entry of the order and any such appeal must be filed within 10 days from the date of disposition.

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<sup>2</sup> In certain types of cases involving minors, we use initials in an attempt to protect the identities of the children. The child in the instant case was born on July 7, 2012.

<sup>3</sup> Mother was not present at the scheduled rehearing on February 17, 2020. She stated that “she was in a vehicle coll[i]sion” and her vehicle was “not drivable.” The Juvenile Court found Mother’s circumstances were “not a compelling circumstance which necessitated a continuance of the rehearing.”

5. Tennessee case law holds that a judgment is final “when it decides and disposes of the whole merits of the case leaving nothing for the further judgment of the court.” *Richardson v. Board of Dentistry*, 913 S.W.2d 446, 460 (Tenn. 1995) (citing *Saunders v. Metropolitan Gov’t of Nashville & Davidson County*, 383 S.W.2d 28, 31 (Tenn. 1964)).

6. At issue is Mother’s appeal of the judgment entered July 6, 2020, which is the denial of Mother’s Motion to Set Aside pursuant to Rule 60.02(5). Mother’s Motion to Set Aside is entirely based upon her failure to appear for the rehearing. Said Motion does not address any merits of the matter related to the final disposition of the dependency and neglect case.

7. On July 6, 2020, Magistrate David S. Walker denied Mother’s Motion to Set Aside stating: “...upon statements of counsel and review of the record, the Special Judge finds that the motion is not well taken and should be denied as the Court considered mother’s attorney’s request for a continuance at the rehearing on February 17, 2020, and mother’s motion does not raise any additional facts that were not already considered by the Court....”

8. Mother does not have a timely appeal before this Court as to the disposition of the dependency and neglect order. The final order as to the dependency and neglect was final as of April 8, 2019 and Mother’s Request for Rehearing was dismissed on February 17, 2020. Mother’s appeal was not perfected until July 10, 2020.

**IT IS ORDERED, ADJUDGED, AND DECREED** that based upon the facts and case law referenced above, Mother’s appeal is denied. This Court finds that Mother’s Motion to Set Aside is entirely based upon her failure to appear for the rehearing. The Juvenile Court properly ruled that Mother did not present any compelling argument to set aside. Mother failed to file a timely appeal as to the disposition of the dependency and neglect order, thus that is not properly before this Court. The grandparents’ and Father’s Motion[s] to Dismiss are granted....

(Internal citation omitted). Mother then filed this timely notice of appeal to this court on February 17, 2021. She submitted notice that no transcript or statement would be filed pursuant to Rule 24 of the Tennessee Rules of Appellate Procedure, as no testimony from the parties was heard before the Circuit Court.

## II. ISSUE

Mother raises the following issue in this appeal:

Whether the Circuit Court erred by finding that Mother's request for an appeal from Juvenile Court to Circuit Court was untimely filed.

### III. STANDARD OF REVIEW

As the issue before us is purely a question of law, our standard of review is de novo, without a presumption of correctness. *See Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999).

### IV. DISCUSSION

Rule 101 of the Juvenile Rules of Practice and Procedure provides that the rules are to "apply to delinquent, unruly, and dependency and neglect proceedings." Tenn. R. Juv. P. 101(b). The Juvenile Court has "exclusive original jurisdiction" over dependency and neglect proceedings. *See* Tenn. Code Ann. § 37-1-103(a)(1). Here, the Juvenile Court obtained exclusive and continuing jurisdiction over this case as a dependency and neglect proceeding when Grandparents filed their initial petition.

Pursuant to Tennessee Code Annotated sections 37-1-107 and 37-1-159, and Rule 118 of the Rules of Juvenile Practice and Procedure, the right to appeal attaches upon entry of the order and any such appeal must be filed within 10 days from the date of disposition. Any appeal from the Juvenile Court's order to the Circuit Court was to proceed pursuant to Tennessee Code Annotated section 37-1-159(a), which explicitly provides:

The juvenile court shall be a court of record; ... any appeal from any final order or judgment in an unruly child proceeding or dependent and neglect proceeding, filed under this chapter, may be made to the circuit court that shall hear the testimony of witnesses and try the case de novo. The appeal shall be perfected within ten (10) days, excluding nonjudicial days, following the entry of the juvenile court's order....

Tenn. Code Ann. § 37-1-159(a).

Based on the record before us, Mother's appeal from the Juvenile Court's order was untimely. She did not have a timely appeal before the Circuit Court as to the disposition of the dependency and neglect order, which was final on April 8, 2019. Mother's request for a rehearing in Juvenile Court was dismissed and final on February 17, 2020. Mother did not perfect her appeal to Circuit Court until July 10, 2020.

The issue presented to the Circuit Court was Mother's appeal of the judgment

entered July 6, 2020, which was the denial of her Motion to Set Aside pursuant to Rule 60.02(5) of the Tennessee Rules of Civil Procedure. The court found “The Juvenile Court properly ruled that Mother did not present any compelling argument to set aside. Mother failed to file a timely appeal as to the disposition of the dependency and neglect order, thus that is not properly before this Court.”

As the appeal was not timely filed as required by Tennessee Code Annotated section 37-1-159(a), the Circuit Court correctly found that Mother’s request for an appeal from the Juvenile Court to the Circuit Court was untimely filed.

Upon the notice of appeal not being filed within 10 days of the entry of the Juvenile Court’s final order, the appeal must be dismissed. *See In re Brian G.*, No. M2017-01586-COA-R3-JV, 2018 WL 4181474, at \*3 (Tenn. Ct. App. Aug. 30, 2018) (citing *Bowden v. Newcomb*, No. 1, 1987 WL 17873, at \*1 (Tenn. Ct. App. Oct. 5, 1987) (“It should be noticed that if the notice of appeal had not been filed within ten days from the juvenile court judgment, our disposition of the case would have been limited to dismissal of the appeal instead of dismissal of the appeal with directions for perfection of the appeal in the circuit court.”)). Here, Mother’s appeal was not timely filed and must be dismissed.

## V. CONCLUSION

The order of the Circuit Court is upheld and the appeal is dismissed. Costs of this appeal are assessed to the appellant, Emily Paige M.

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JOHN W. MCCLARTY, JUDGE